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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 UNITED STATES OF AMERICA,

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16 Plaintiff,

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18 v.

19 CODY ALLEN EASTERDAY,

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21 Defendant.
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Case No. 4:21-CR-06012-SAB

**DEFENDANT'S MOTION FOR
SENTENCE REDUCTION UNDER
18 U.S.C. § 3582(c)(2)**

**With Oral Argument:
March 27, 2024 at 2:30 p.m.**

At the time of his sentencing in 2022, the United States Probation Office (“USPO”) calculated Mr. Easterday’s total offense level as thirty-two (32), with a criminal history score of zero (0). Mr. Easterday’s Presentence Investigation Report (“PSR”) included the following calculation:

Base Offense Level:	7	U.S.S.G. § 2B1.1(a)(1)
Loss Amount:	+26	U.S.S.G. § 2B1.1(b)(1)(N)
Sophisticated Means:	+2	U.S.S.G. § 2B1.1(10)(C)
<u>Acceptance of Responsibility:</u>	<u>-3</u>	U.S.S.G. § 3E1.1
Total Offense Level:	32	

As a result, the PSR calculated a sentencing guideline range of 121 to 151 months’ imprisonment given that Mr. Easterday’s criminal history score established a Criminal History Category of I. (*See* ECF No. 59, PSR ¶¶40-63.)

On April 27, 2023, the United States Sentencing Commission (the “Commission”) submitted to Congress an amendment to the federal sentencing guidelines. *See* U.S.S.G. § 4C1.1, Adjustment for Certain Zero-Point Offenders. This amendment, also commonly referred to as the “Amendment 821”, “2023 Criminal History Amendment”, or “Zero-Point Offenders Amendment” created a new Chapter 4 guideline, which provides for a decrease of two levels from the offense level determined under Chapters Two and Three for a defendant who did not receive any criminal history points, and whose instant offense did not involve specified aggravating factors.

In promulgating Amendment 821, the Commission considered several recidivism studies, and these studies found “that zero-point offenders recidivated far

Accordingly, and for the reasons stated below, Mr. Easterday respectfully requests this Court to reduce his term of imprisonment previously imposed from 132 months to 97 months. In the event the Court is not inclined to reduce Mr. Easterday's sentence to 97 months, Mr. Easterday requests that the Court at least apply a proportional reduction from Mr. Easterday's original sentence of 105.88 months, as has been agreed to other defendant's cases by the AUSA and defense counsel.

Congress has provided an exception to the general rule that a federal court may not modify the terms of imprisonment once it has been imposed. *Dillon v. U.S.*, 560 U.S. 817, 819 (2010). This exception applies “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *See id.* (quoting 18 U.S.C. § 3582(c)(2) (internal quotes omitted)).

In accordance with 18 U.S.C. § 3582(c)(2), when a sentencing range “has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2).

Further, reductions made pursuant to 18 U.S.C. § 3582(c)(2) are also governed by policy statement U.S.S.G. § 1B1.10, which states that “proceedings under 18 U.S.C. § 3582(c)(2) and [U.S.S.G. § 1B1.10] do not constitute a full resentencing of the defendant.” *See* § 1B1.10(a)(3). Section 1B1.10 further states:

In General.--In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced *and shall leave all other guideline application decisions unaffected.*

See § 1B1.10(b)(1)(emphasis added).

III. APPLICATION

A. § 4C1.1. Adjustment for Certain Zero-Point Offenders.

Mr. Easterday satisfies the requirements of Amendment 821, now found in U.S.S.G. § 4C1.1, which makes him eligible for a 2-point reduction in his total

offense level and the corresponding downward adjustment of the applicable guideline range. Mr. Easterday's eligibility was confirmed by USPO, (*see* ECF No. 105), and it is not contested by the Government. (*See* Decl. of C. Oreskovich, ¶4.) Mr. Easterday falls squarely within the group of individuals that the Commission intended to impact with Amendment 821. However, to the extent the Court requires additional briefing on Mr. Easterday's eligibility, the undersigned would gladly supplement this filing.

B. Application of 18 U.S.C. § 3553 Factors to Mr. Easterday's Motion for a Sentence Reduction.

With Mr. Easterday's eligibility established, the Court may reduce Mr. Easterday's "term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

Here, the § 3553(a) factors support a sentence reduction to a sentence of 97 months (or 8 years and 1 month), or at the very least a proportional reduction from Mr. Easterday's original sentence to 105.88 months.

In summary, Mr. Easterday is a high school graduate who worked tirelessly to build a remarkable farming and ranching operation. (*See* ECF No. 50, Defendant's Sentencing Memorandum and Motion for Downward Variance.) He lived humbly and did not engage in a lavish lifestyle. He did not inherit wealth, nor did he pursue entitlement. (*Id.* at 18-27.) Rather, he worked seven days a week earning and building his business. (*Id.*) He was a generous employer and member of the

community who constantly brought support to struggling employees and community members. (*Id.*) His willingness to help those in need is well-known.

Mr. Easterday's crimes occurred as a result of tremendous trading losses in the Commodities Market triggered by his addiction. (*Id.*) Unlike any other, Mr. Easterday kept complete records detailing his fraud, self-disclosed his wrongful conduct and spent weeks providing records detailing the fraud to Tyson. (*Id.*) Mr. Easterday quickly admitted guilt and engaged in a speedy resolution of his criminal charges. (*Id.*) Mr. Easterday is humiliated and remorseful for his conduct. He presents no risk of recidivism. (*Id.*) He worked non-stop in the bankruptcy to maximize the value of the bankruptcy estate to repay creditors. (*Id.*)

Additionally, as of November 30, 2023, \$78,635,054.46 has been paid to Mr. Easterday's victims out of the \$244,031,132.00 that Mr. Easterday owes in restitution, which represents a 32% recovery to date. (*See* ECF No. 103, Stipulated Motion to Apply Restitution Offsets Pursuant to 18 U.S.C. § 3664(j).) If given the opportunity, Mr. Easterday will work to further repay the debt he owes, just as he actively worked to create significant value during bankruptcy proceedings in order to pay back the victims of his offense. Further, while Mr. Easterday has worked to pay back tens of millions of dollars in restitution to his victims, Mr. Easterday is an outlier across most criminal defendants. *See generally*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-203, FEDERAL CRIMINAL RESTITUTION MOST DEBT IS OUTSTANDING AND OVERSIGHT OF COLLECTIONS COULD BE IMPROVED, pg. 23 (2018) (describing how the Government did not collect any restitution payments from two-thirds of all restitution debts ordered between 2014 through 2016). Thus,

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2 Mr. Easterday requests that the Court consider his efforts to-date to repay his victims
3 when considering the application of Amendment 821. A reduced sentence would
4 serve the multiple purposes of respecting the rule of law, providing just punishment,
5 and giving Mr. Easterday an opportunity, once released from custody, to further
6 work towards repaying his debt.
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9 Mr. Easterday's efforts while incarcerated have been exemplary. He has
10 served his time productively since his incarceration. He has received zero incident
11 reports or disciplinary actions while incarcerated. Mr. Easterday has worked over
12 2,000 hours in the eleventh month period between January 1, 2023 and November
13 30, 2023 for UNICOR, which is an average of more than 41 hours per week. As a
14 result of Mr. Easterday's efforts he has received several Achievement Certificates
15 and Awards, such as: (1) Achievement of Excellence Certificate for the successful
16 completion of a 500 hour Master Mechanic Program; (2) Achievement of Excellence
17 Certificate for the successful completion of 500 hour Agri-Business Vocational
18 Program; (3) Achievement of Excellence Certificate for the completion of 1000 hour
19 Agri-Business Vocation Program; and (4) Special Achievement Award for working
20 weekends and evenings during harvest season. (See Exhibit A, Certificates and
21 Awards.) Thus, Mr. Easterday requests that the Court consider his positive conduct
22 while incarcerated when considering the application of Amendment 821.
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28 Last, a reduced sentence no greater than 97 months would not create
29 unwarranted sentencing disparity. In fact, it would be higher than a substantial
30 majority of similarly situated defendants. Recently, the Federal Judicial Center in
31 conjunction with the U.S. Sentencing Commission created a "Judicial Sentencing
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Information” [sic] platform (JSIN).¹ The JSIN “provides five years of cumulative data for people who were convicted of a similar or the same crime, have a similar criminal history, and have been convicted of an offense that falls under the same sentencing guideline.”² Dozens of district courts across the United States have begun routinely incorporating the results of JSIN runs into PSRs including the Eastern District of Washington.³

According to the JSIN, “[d]uring the last five fiscal years (FY2018-2022), there were 131 defendants whose primary guideline was §2B1.1, with a Final Offense Level of 30 and a Criminal History Category of I, after excluding defendants who received a §5K1.1 substantial assistance departure. . . . For all 131 defendants in the cell, the average sentence imposed was 71 month(s) and the median sentence imposed was 72 month(s).”⁴

To provide the Court with a more informative perspective of these 131 sentences, the histogram below illustrates the distribution of these sentences by select ranges.⁵ As indicated, five individuals received a sentence of a single day (0.03

¹ Administrative Office of the U.S. Courts *Judiciary Studies Use of Online Tool in Presentence Reports*, Apr. 28, 2023, <https://www.uscourts.gov/news/2023/01/25/judiciary-studies-use-online-tool-presentence-reports>.

² *Id.*

³ *Id.*

⁴ United States Sentencing Comm’n, Judiciary Sentencing INformaiton (JSIN), <https://jsin.ussc.gov/>.

⁵ Undersigned counsel engaged the services of SentencingStats.com, Inc. (www.sentencingstats.com) to analyze the U.S. Sentencing Commission’s publicly available datafiles and create the histogram set forth below.

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2 sentence Mr. Easterday below the guideline range if “defendant received an
3 adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the
4 defendant's applicable guideline range overstates the gravity of the offense because
5 the offense of conviction is not a crime of violence or an otherwise serious offense.”
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7 See U.S.S.G. § 5C1.1, Note 10. Mr. Easterday has found very little guidance
8 regarding the application of this Comment, and understands the limitations found in
9 USSG § 1B1.10(b)(2) appear to limit retroactive application of § 4C1.1 to the
10 minimum amended guideline range. However, to the extent the Court would
11 consider a sentence below the amendment guideline range, Mr. Easterday would
12 happily provide additional briefing on that topic.
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16 IV. CONCLUSION

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18 For all the foregoing reasons, Mr. Easterday requests that this Court grant
19 this Motion for a Sentence Reduction Under 18 U.S.C. § 3582(c)(2).
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22 RESPECTFULLY SUBMITTED this 31st day of January, 2024.
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24 ETTER, McMAHON, LAMBERSON,
25 VAN WERT & ORESKOVICH, P.C.
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all of the attorneys that have appeared in this case and have registered with the CM/ECF System.

EXECUTED this 31st day of January, 2024 in Spokane, WA.

By: /s/ Jodi Dineen
Jodi Dineen